

STORAGE NAME: h3705s2.go

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 3705

RELATING TO: Public Records

SPONSOR(S): Committees on Governmental Operations, Environmental Protection,
Representative Edwards and others

COMPANION BILL(S): SB 814(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 11 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3) FINANCE AND TAXATION
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
- (5)

I. SUMMARY:

This bill creates public records exemptions for certain trade secrets held by the Department of Community Affairs which are provided by a stationary source subject to the Accidental Release Prevention Program under the federal Clean Air Act. This bill includes a public necessity statement explaining the need for the exemption, as is required by s. 24, Art. I of the State Constitution. The exemption is made subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2003, unless reviewed and saved from repeal by the Legislature.

This bill provides that it will take effect on the same date CS/CS/HB 3717 takes effect.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Federal Clean Air Act

Section 112(r) of the Federal Clean Air Act establishes the Accidental Release Prevention Program, which is intended to prevent accidental releases of listed toxic, flammable, and explosive substances and to minimize the consequences of such releases. The program, codified in 42 USCS s.7412, sets out a general duty for owners and operators of stationary sources who produce, process, handle, or store listed substances or any other extremely hazardous substances to initiate specific activities to prevent and mitigate accidental releases. Among these requirements is the development of Risk Management Plans, which require that listed substances be reported if on the premises.

Section 112 creates an independent safety board, the Chemical Safety and Hazard Investigation Board. Among other duties, the board investigates and reports to the public the causes and circumstances of serious accidental releases. Because making public certain information regarding specific substances and their uses could reveal trade secrets, section 112 exempts such information from being released, upon a determination by the board that releasing such information would cause substantial harm to a person's competitive position.

The federal program may be delegated to a state upon a showing that the state has in place a program meeting federal requirements. CS/HB 3717 would establish the Accidental Release Prevention and Risk Management Planning Program that would enable Florida to seek delegation from the US Environmental Protection Agency. If CS/HB 3717 is enacted, this bill or similar legislation must be enacted to provide for the necessary confidentiality under Florida law. Although s. 119.07, F.S., generally establishes the right of the public to inspect any public record, the State Constitution authorizes exemptions to be created under general law.

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

- (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

B. EFFECT OF PROPOSED CHANGES:

This bill creates two public records exemptions, as follows:

- (1) When the Department of Community Affairs is required to protect records, reports or information or particular part thereof (other than release or emissions data) contained in a risk management plan from public disclosure pursuant to Sections 112(r) and 114(c) of the federal Clean Air Act and authorities cited therein, based upon a showing satisfactory to the Administrator of the U.S. Environmental Protection Agency by any owner or operator of a stationary

source subject to the Accidental Release Prevention Program that public release of such records, reports or information would divulge methods or processes entitled to protection as trade secrets defined in 40 CFR Part II Subpart B, such records, reports or information is confidential and exempt from the provisions of s. 119.01(1) and s. 24(a), Art. I of the State Constitution.

- (2) When the department is required to protect records, reports or information or particular part thereof (other than release or emissions data) obtained from an investigation, inspection or audit from public disclosure pursuant to Sections 112(r) and 114(c) of the federal Clean Air Act and authorities cited therein, based upon a showing satisfactory to the Administrator of the U.S. Environmental Protection Agency by any owner or operator of a stationary source subject to the Accidental Release Prevention Program that public release of such records, reports or information would divulge methods or processes entitled to protection as trade secrets defined in 40 CFR Part II Subpart B, such records, reports or information is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

These exemptions are made subject to the Open Government Sunset Review Act of 1995 in accordance with s.119.15, F.S., and will stand repealed on October 2, 2003, unless reviewed and reenacted by the Legislature.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

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This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 252.943, F.S.

E. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1998, the Committee on Environmental Protection heard HB 3705 and adopted 5 amendments.

Amendment 1: Removed a reference to s. 24(a), Article I of the State Constitution.

Amendment 2: Removed the section of the bill providing the department, State Hazardous Emergency Response Commission, and local emergency planning committees disclose nonconfidential information to the public. This section also provided fees for copying.

Amendment 3: Inserted the term "HB 3717" into section 3 of the bill, making this bill take effect at the same time as HB 3717.

Amendment 4: Added the term "certain" to better specify what information be held confidential.

Amendment 5: Provided that the disclosure of trade secret information is likely to cause substantial harm to the competitive position of a stationary source.

These amendments were adopted by the Committee on Environmental Protection, and the bill, as amended, was made a committee substitute.

On March 30, 1998, the Committee on Governmental Operations adopted a remove everything after the enacting clause amendment.

The amendment creates two exemptions, both of which run to the Department of Community Affairs. The exemptions are for trade secrets in risk management plans and trade secrets obtained pursuant to an investigation, inspection, or audit. The exemptions are crafted to comport with the trade secret requirements provided by federal law. Additionally, the cross-reference to s. 24(a), Art. I of the State Constitution, was reinserted into the bill. Finally, the amendment changed the breadth of the public necessity statement to comport with the scope of the exemption.

The committee substitute, as amended, was made a committee substitute.

Subsection (1) of CS/HB 3705 had exempted certain trade secret information in risk management plans held by the State Hazardous Materials Emergency Response Commission. Subsection (2) had exempted certain "specific information". That exemption had not addressed what the specific information would cover or which agency would be in possession of such information. Subsection (3) had exempted certain inspection, audit, and investigation information held by the Department of Community Affairs. None of the exemptions had cross-referenced Art. I, s. 24 of the State Constitution. In addition, the public necessity statement, required by Art. I, s. 24, had only addressed the need for the exemption regarding trade secret information in risk management plans.

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VII. SIGNATURES:

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